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The Right to Treatment for Mentally Ill Juveniles in California

Jane Elizabeth Lovell

THE RIGHT TO TREATMENT FOR MENTALLY ILL JUVENILES IN CALIFORNIA

In July of 1969, a 13-year-old patient at the Children's Unit of Napa State Hospital was the victim of a brutal homosexual assault by other inmates.[1] This attack received widespread publicity and was brought to the attention of members of the state legislature.[2] Some of the factors which made possible this kind of incident were a lack of sufficient staff, overadmissions to the Children's Unit, the admission of overly-aggressive and destructive children, and overcrowded conditions on the wards, all of which led to inadequate supervision.[3]

On August 1, 1969, in the wake of the publicity regarding this assault, the director of California's Department of Mental Hygiene (DMH) issued a directive regarding the Children's Unit at Napa, which provided in part as follows: "Admission Changes. No minors with history of overtly aggressive physical behavior or inappropriate sexual behavior prior to admission will be received on juvenile court observations at the Napa State Hospital."[4] The majority of such violent young patients had been referred to the Children's Unit for observation and diagnosis by the juvenile courts.[5] The immediate effect of the DMH's directive regarding the admission of aggressive patients to the Children's Unit was an increase in the number of severely disturbed children incarcerated in county juvenile halls.[6]

An administrative "solution" such as the one above, which closes off avenues of treatment for severely mentally ill juvenile court wards without offering any alternatives, can lead to a violation of the juvenile's statutory and constitutional rights. A series of recent court decisions[7] suggests that these children have a constitutional right to *adequate* and *appropriate* treatment, which in far too many cases is not being provided. Emergency measures for dealing with this problem, as well as some

1. ARTHUR S. BOLTON & ASSOCIATES, PRELIMINARY REPORT TO THE CALIFORNIA LEGISLATURE ASSEMBLY SELECT COMMITTEE ON SERVICES FOR MENTALLY ILL AND HANDICAPPED CHILDREN 1 (1970) [hereinafter cited as PRELIMINARY REPORT].
2. *Id.*
3. *Id.*
4. *Id.* at 7, n.9.
5. *Id.* at 7.
6. *Id.*
7. See note 47 *infra.*

long-range solutions, are possible if existing California statutes are enforced.[8]

The Constitutional Right to Treatment for Mental Patients

The concept of a "right to treatment" for patients involuntarily civilly confined to mental hospitals was first articulated by Dr. Morton Birnbaum in 1960.[9] Birnbaum's thesis was that the forced hospitalization of mentally ill people without the provision of "adequate medical treatment so that [the patient] may regain his health, and therefore his liberty, as soon as possible" violates the due process clause of the fourteenth amendment.[10]

There was no judicial recognition of the issue raised by Dr. Birnbaum's initial article until 1966, when the Court of Appeals for the District of Columbia decided *Rouse v. Cameron*.[11] The court in *Rouse* found that under section 21-562 of the District of Columbia Code,[12] patients involuntarily committed to a mental hospital in the District of Columbia had a statutory right to treatment. Judge Bazelon,[13] writing for the majority in *Rouse*, noted that even without such a statute, forced confinement in a public mental hospital without treatment might violate either the due process clause, the equal protection clause, or the eighth amendment prohibition against cruel and unusual punishment.[14] Following *Rouse*, the District of Columbia Circuit reaffirmed the right to treatment in a number of similar cases.[15]

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8. See notes 114-19 *infra*.

9. Birnbaum, *The Right to Treatment*, 46 A.B.A.J. 499 (1960).

10. *Id.* at 503. Birnbaum does not explain his due process argument beyond the statement that involuntary commitment without treatment "is not due process of law because it is not 'fair and just and proper.'" *Id.* at 504, *quoting* Solesbee v. Balkom, 339 U.S. 9, 16 (1950) (Frankfurter, J., dissenting). Justice Frankfurter based his definition of due process on "moral principles . . . deemed fundamental to a civilized society . . . ." *Id.* He further explained that the most fundamental rights granted by the Constitution are likely to be the least explicitly defined. *Id. See generally* Kadish, *Methodology and Criteria in Due Process Adjudication—a Survey and Criticism*, 66 YALE L.J. 319 (1957).

11. 373 F.2d 451 (D.C. Cir. 1966).

12. Section 21-562 of the District of Columbia Code specifies that anyone "hospitalized in a public hospital for a mental illness shall, during his hospitalization, be entitled to medical and psychiatric care and treatment." D.C. CODE ANN. ENCYCL. § 21-562 (1966).

13. Judge Bazelon's first 25 years on the United States Court of Appeals for the District of Columbia are commemorated in a recent *festschrift*, much of which is devoted to the right to treatment. *See* 123 U. PA. L. REV. 243-508 (1974).

14. 373 F.2d at 453.

15. *See In re* Curry, 452 F.2d 1360 (D.C. Cir. 1971); Covington v. Harris, 419 F.2d 617 (D.C. Cir. 1969); Dobson v. Cameron, 383 F.2d 519 (D.C. Cir. 1967); Tribby

Other jurisdictions also began to recognize a constitutional right to treatment.[16] The Fifth Circuit accepted the concept in *Donaldson v. O'Connor*.[17] Judge Wisdom, writing for a unanimous court, found that the right to treatment for patients involuntarily civilly committed to state mental hospitals is guaranteed under the fourteenth amendment.[18] This conclusion was based on the proposition that involuntary commitment constitutes a "massive curtailment of liberty" which may be justified only in terms of some "permissible governmental goal."[19] The type of governmental power involved in involuntary commitment depends on the nature of the patient's mental illness. A state exercises its police power to commit a person who presents a danger to others. On the other hand, a person who requires care and treatment is committed through application of a state's *parens patriae* power. The court in *Donaldson* held that if the state justifies commitment on the *parens patriae* theory, treatment must be provided, "lest the involuntary commitment amount to an arbitrary exercise of government power proscribed by the due process clause."[20] The court, however, did not so narrowly circumscribe the right to treatment. According to Judge Wisdom's analysis, a person who is dangerous to himself might be committed under a mixture of *parens patriae* and police power rationales. Nonetheless, the court found that in order to guarantee due process rights, the distinction between police power and *parens patriae* theories need not be determinative:

> when the three central limitations on the government's power to detain—that detention be in retribution for a specific offense; that it be limited to a fixed term; and that it be permitted after a proceeding where fundamental procedural safeguards are observed—

v. Cameron, 379 F.2d 104 (D.C. Cir. 1967); Millard v. Cameron, 373 F.2d 468 (D.C. Cir. 1966).

16. *See* Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974); Welsch v. Likins, 373 F. Supp. 487 (D. Minn. 1974); Stachulak v. Coughlin, 364 F. Supp. 686 (N.D. Ill. 1973). The trial court in the Northern District of Georgia had earlier held that there was no constitutional right to treatment. Burnham v. Dep't of Public Health, 349 F. Supp. 1335 (N.D. Ga. 1972), *rev'd*, Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974). This case was consolidated for appeal with Wyatt v. Stickney, 344 F. Supp. 373 (M.D. Ala. 1972). On appeal, the Fifth Circuit resolved the conflict in favor of the right to treatment. Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974). (The cases listed above all dealt with the problems of *adult* mental patients.)

17. 493 F.2d 507 (5th Cir. 1974), *vacated*, 422 U.S. 563 (1975). The Fifth Circuit opinion has provoked considerable comment. *See, e.g.*, Note, *Civil Commitment and the Right to Treatment*, 35 LA. L. REV. 563 (1975); Note, *Right to Treatment for Nondangerous Involuntary Civilly Committed Persons*, 46 MISS. L.J. 345 (1975); Note, *Right to Adequate Psychiatric Treatment—an Illusory Guarantee for the Dangerous Patient*, 27 U. FLA. L. REV. 295 (1974).

18. 495 F.2d at 520.

19. *Id.*

20. *Id.* at 521.

> are absent, there must be a *quid pro quo* extended by the government to justify confinement.[21]

The court defined the *quid pro quo* as that treatment which "[w]ill help [the patient] to be cured or to improve his mental condition."[22]

The Fifth Circuit opinion in *Donaldson*, which appeared to establish firmly the constitutional right to treatment for persons involuntarily civilly committed to public mental hospitals, was vacated by the Supreme Court on appeal.[23] Although the Court found that Donaldson's own civil rights had been violated by his lengthy confinement without treatment in a Florida state hospital,[24] it specifically declined to rule on the "right of treatment" aspect of Donaldson's case.[25] Instead, the Court narrowed its ruling to the facts of the *Donaldson* case and found that because Kenneth Donaldson was not dangerous, mere custodial confinement was a denial of his due process right to liberty.[26] Thus, the Court indicated only that a *nondangerous* person cannot be confined *without* treatment. The decision side-stepped two major questions raised by the Fifth Circuit opinion: whether dangerous mentally ill people have a right to treatment when they are involuntarily committed; and whether a state may confine nondangerous mentally ill people if it offers them treatment.[27] Moreover, the Court failed to come to any conclusion even as to the less controversial aspect of the Fifth Circuit opinion, that wholly nondangerous patients have a right to treatment.[28] Instead, the Court chose to follow the long-standing tradition of narrowing its decision to the facts of the particular case.[29] Perhaps the Supreme Court will announce a constitutional right to treatment when the proper case arises. In the meantime, the concept of a constitutional right to treatment has gained wide acceptance within the legal profession[30] and is well established by the weight of judicial authority in the

21. *Id.* at 522.
22. *Id.* at 520.
23. O'Connor v. Donaldson, 422 U.S. 563 (1975).
24. *Id.* at 576.
25. *Id.* at 573.
26. *Id.* at 576.
27. *Id.* at 573.
28. *See id.* at 577-78 n.12.
29. *Id.* at 573-74. The Supreme Court frequently declines to answer constitutional questions unless their resolution is absolutely necessary in the case before the Court. *See, e.g.*, Harmon v. Brucker, 355 U.S. 579 (1958); Barr v. Matteo, 355 U.S. 171 (1957); Neese v. Southern Ry., 350 U.S. 77 (1955); United States v. Spector, 343 U.S. 169 (1952); Alabama State Fed'n of Labor v. McAdory, 325 U.S. 450 (1945).
30. *See, e.g.*, Bazelon, *Implementing the Right to Treatment*, 36 U. CHI. L. REV. 742 (1969); Chambers, *Alternatives to Civil Commitment of the Mentally Ill: Practical Guides and Constitutional Imperatives*, 70 MICH. L. REV. 1108 (1972); *Symposium—The Right to Treatment*, 57 GEO. L.J. 673 (1969); Comment, *Wyatt v. Stickney and the Right of Civilly Committed Mental Patients to Adequate Treatment*, 86 HARV. L.

lower courts.[31] In addition, the right to treatment is guaranteed to involuntarily committed mental patients by statute in a number of jurisdictions.[32]

The Constitutional Right to Treatment for Juveniles

The Due Process Right to Treatment

Recent decisions have established the right to treatment perhaps more firmly for juvenile offenders than for adult mental patients.[33]

The underlying philosophy of the juvenile court system has been, since its inception at the end of the nineteenth century, that child offenders are not criminals and that they should not be tried and sentenced in the same manner as adults. The juvenile court proceeding was designed to make the child "feel that he is the object of [the state's] care and solicitude."[34] The motivating principle was that the child should be "treated" and "rehabilitated" rather than punished for his transgressions.[35] This *parens patriae* philosophy has been consistently used as the justification for denying procedural due process rights to children.[36]

While most courts continue to pay lip service to the juvenile court ideal, many others have now recognized that "the constitutional and theoretical basis for this peculiar system is—to say the least—debata-

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REV. 1282 (1973); Note, *The Nascent Right to Treatment*, 53 VA. L. REV. 1134 (1967); Note, *Civil Restraint, Mental Illness, and the Right to Treatment*, 77 YALE L.J. 87 (1967).

31. See notes 14-15 & accompanying text *supra*.

32. In spite of the unsettled state of the constitutional question, many states have statutes which guarantee the right to treatment for mental patients. *See, e.g.*, IDAHO CODE § 66-344 (Supp. 1975); ILL. REV. STAT. ch. 91½, §§ 12-1, 100-7 (Smith Hurd Supp. 1975); IOWA CODE ANN. § 225.15 (1969); MO. ANN. STAT. § 202.840 (1972); N.Y. MENTAL HYGIENE LAW § 15-03(a) (McKinney Supp. 1975-76); UTAH CODE ANN. § 64-7-46 (Supp. 1975). See also note 64 *infra*.

33. This body of law is founded on the principle that these children should be protected because of their youth, not necessarily because of their psychiatric problems. In fact, many of these juveniles do have psychiatric problems, which contributed to their becoming wards of the juvenile court. The failure of the juvenile court system to identify such children as specifically needing psychiatric care has been noted. See text accompanying note 100 *infra*.

34. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 120 (1909). The way in which the juvenile courts work in reality has been severely criticized. *See, e.g.*, P. MURPHY, OUR KINDLY PARENT—THE STATE (1974).

35. From the beginning, treatment has been stressed in cases involving juveniles. *See In re* Sharp, 15 Idaho 120, 127, 96 P. 563, 564 (1908); Wissenberg v. Bradley, 209 Iowa 813, 816, 229 N.W. 205, 207 (1929); Commonwealth v. Fisher, 213 Pa. 48, 50, 62 A. 198, 199 (1905); Wisconsin Indus. School for Girls v. Clark County, 103 Wis. 651, 665, 79 N.W. 422, 427 (1899).

36. *See In re* Gault, 387 U.S. 1, 17 (1967).

ble."[37] In *Kent v. United States*[38] Justice Fortas recognized the basis of the problem:

> There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.[39]

Accordingly, due process rights previously denied have been extended to children in a number of Supreme Court decisions in the last three decades.[40] Nevertheless, because of a reluctance to abandon the juvenile court ideal entirely and view juvenile court proceedings as "criminal" in nature, juvenile offenders have not been accorded the full range of procedural due process rights granted to adults. In *McKeiver v. Pennsylvania*,[41] the Supreme Court held that juveniles have no sixth amendment right to trial by jury. The Court supported this holding by stating that

> [t]here is a possibility, at least, that the jury trial, if required as a matter of constitutional precept, will remake the juvenile proceeding into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding.[42]

Were the juvenile court process equated with the adult criminal trial, the *McKeiver* court believed, "every aspect of fairness, of concern, of sympathy, and of paternal attention that the juvenile court system contemplates" would be ignored.[43]

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37. *Id.*

38. Kent v. United States, 383 U.S. 541 (1966).

39. *Id.* at 556.

40. *See* Breed v. Jones, 421 U.S. 519 (1975) (fifth amendment protection against double jeopardy applied to juvenile court proceedings); *In re* Gault, 387 U.S. 1, 13 (1967) (accused's fifth and sixth amendment rights to counsel, to be informed of the charges, and against self-incrimination applied to juvenile delinquency hearing: "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone"); Kent v. United States, 383 U.S. 541, 553 (1966) ("basic requirements of due process and fairness" must be afforded to juveniles); Gallegos v. Colorado, 370 U.S. 49 (1962) (due process clause prohibited use of confession of 14-year-old obtained before juvenile had seen judge, lawyer, parent, or other friendly adult); Haley v. Ohio, 332 U.S. 596 (1948) (due process clause barred use of 15-year-old's confession).

41. McKeiver v. Pennsylvania, 403 U.S. 528 (1971).

42. *Id.* at 545.

43. *Id.* at 550. The California courts have consistently held that children have no constitutional right to a jury trial. *See In re* Daedler, 194 Cal. 320, 332, 228 P. 467, 472 (1924); *In re* Dennis M., 70 Cal. 2d 444, 456-57, 450 P.2d 296, 302-03, 75 Cal. Rptr. 1, 8-9 (1969) (by implication); *In re* T.R.S., 1 Cal. App. 3d 178, 182, 81 Cal. Rptr. 574, 576 (1969); *In re* Joe R., 12 Cal. App. 3d 80, 84, 90 Cal. Rptr. 530, 532 (1970). The courts have specifically found that this rule was still sound in spite of the Supreme Court's holding in *In re* Winship, 397 U.S. 358 (1970). *See In re* Steven C., 9 Cal. App. 3d 255, 260-61, 88 Cal. Rptr. 97, 99 (1970). *McKeiver* does not necessarily indicate a reversal of the recent trend toward affording due process rights

This restriction of due process safeguards is not, however, unqualified. Through reasoning similar to that used by Judge Wisdom in *Donaldson*, courts have recognized that juveniles who are confined without the due process rights available to adults have a right to treatment. The possibility of long-term confinement without complete procedural due process can be upheld only if it furthers some "permissible governmental goal."[44] In *In re Gault*[45] the Supreme Court recognized that

> to the extent that the special procedures for juveniles are thought to be justified by the special consideration and treatment afforded them, there is reason to doubt that juveniles always receive the benefits of such a *quid pro quo*. . . . The high rate of juvenile recidivism casts some doubt upon the adequacy of treatment afforded juveniles. . . .
>
> In fact some courts have recently indicated that appropriate treatment is essential to the validity of juvenile custody, and therefore that a juvenile may challenge the validity of his custody on the ground that he is not in fact receiving any special treatment.[46]

The concept has developed that without the *quid pro quo* of treatment, there can be little justification for the denial of full constitutional rights to children who come within the juvenile court process. A number of recent decisions, relying on the "*quid pro quo*" argument, have found that children who are wards of the juvenile court have a right to rehabilitative treatment under the United States Constitution and relevant state statutes.[47] The due process right to treatment for juvenile offenders, like the right to treatment for adult mental patients, has been well documented and need not be further explored here.[48]

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to children. In *Breed v. Jones*, the Court stated, "[w]ith the *exception* of *McKeiver v. Pennsylvania*, the Court's response . . . has been to make applicable in juvenile proceedings constitutional guarantees associated with traditional criminal prosecutions." 421 U.S. 528-29 (1975) (emphasis added).

44. Donaldson v. O'Connor, 493 F.2d 507, 520 (5th Cir. 1974), *vacated*, 422 U.S. 563 (1975).

45. *In re* Gault, 387 U.S. 1 (1967).

46. *Id.* at 22-23, n.30.

47. *See* Nelson v. Heyne, 491 F.2d 352 (7th Cir.), *cert. denied*, 417 U.S. 976 (1974); Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974); Martarella v. Kelley, 359 F. Supp. 478 (S.D.N.Y. 1973), *enforcing* 349 F. Supp. 575 (S.D.N.Y. 1972); Inmates of Boys Training School v. Affleck, 346 F. Supp. 1354 (D.R.I. 1972).

48. *See generally* Bazelon, *Whose Needy Children?*, 8 U. MICH. J.L. REF. 237 (1975); Faust, *Implementing the Juvenile's Right to Treatment*, 6 CLEARINGHOUSE REV. 256 (1972); Kittrie, *Can the Right to Treatment Remedy the Ills of the Juvenile Process?*, 57 GEO. L.J. 848 (1969); Pyfer, *The Juvenile's Right to Receive Treatment*, 6 FAMILY L.Q. 279 (1972); Note, *Institutionalized Juveniles Have a Right to Rehabilitative Treatment*, 4 CAPITAL U.L. REV. 85 (1974); Note, *A Right to Treatment for Juveniles?*, 1973 WASH. U.L.Q. 157 (1973).

The Eighth Amendment Right to Treatment for Mentally Ill Juveniles

The Supreme Court has ruled that a status, such as addiction to narcotics or mental illness, may not be punished as a crime. In *Robinson v. California*,[49] the Court determined that imprisonment of people who have not been found guilty of any criminal act constitutes cruel and unusual punishment in violation of the eighth amendment.[50]

The Court's reasoning in *Robinson* is applicable to juveniles. First, no juvenile is found guilty of a criminal act. Even those youths commonly termed "delinquents" come within the jurisdiction of the juvenile court not because they have committed crimes, but rather because they have committed acts which would be deemed criminal if perpetrated by an adult.[51] The purpose of juvenile court jurisdiction, even for these minors, is consistently said to be rehabilitative, not punitive; treatment, rather than retribution, is the stated goal of confinement. Thus, in *Inmates of Boys' Training School v. Affleck*,[52] the court held that although the theory behind the boys' confinement was rehabilitation, the reality of their incarceration amounted to punishment.[53] Consequently, the court enjoined the use of the facility's confinement cells,[54] specified minimal standards of health care, clothing, bedding, and personal hygiene supplies,[55] and ordered the institution to submit a plan for psychiatric counseling.[56]

Similarly, in *Nelson v. Heyne*,[57] the court held that in administering tranquilizing drugs to incarcerated juveniles to control their excited behavior, reformatory officials violated the inmates' eighth amendment rights. The court reached this conclusion by finding that the control measures used were disproportionate to the behavior which had invoked them, and that the severity of the method offended "broad and idealistic concepts of dignity, civilized standards, humanity, and decency."[58] The court concluded that the state may not use " 'cruel and unusual' means to accomplish its benevolent end of reformation."[59]

Thus, even when youths who have violated particular laws are involved, and even if some punitive measures are condoned, the methods of maintaining order may not be disproportionate to the disruptive acts,

49. 370 U.S. 660 (1962).
50. *Id.* at 666.
51. *See* CAL. WELF. & INST'NS CODE § 602 (West Supp. 1975).
52. 346 F. Supp. 1354 (D.R.I. 1972).
53. *Id.* at 1366.
54. *Id.* at 1367.
55. *Id.* at 1373.
56. *Id.* at 1374.
57. 491 F.2d 352 (7th Cir. 1974).
58. *Id.* at 356.
59. *Id.* at 357.

and the goal of the punishment must be rehabilitative. Mere confinement without treatment, since it cannot be said to foster the goal of rehabilitation, constitutes cruel and unusual punishment.

Many youths, however, are confined despite the fact that they have violated no laws.[60] The California statutes which provide for juvenile court jurisdiction over youths who are found to be "incorrigible" or dangerous to the public because of mental illness are typical of state juvenile provisions which allow for confinement of minors who have not violated laws.[61] In the case of these juveniles, the Court's reasoning in *Robinson* applies with particular force, as the "status" nature of their "offenses" is apparent. If these minors are confined without treatment, their incarceration must be deemed punishment, and it must constitute cruel and unusual punishment, in violation of the eighth amendment.

California Juveniles and the Right to Treatment

In California, the rehabilitative ideal of the juvenile court has been recently confirmed.[62] In addition, the right of state juvenile court wards to rehabilitative treatment is supported by the purpose clause of the California Juvenile Court Law[63] as well as by statutes which guarantee treatment to involuntarily civilly committed mental patients.[64] Both section 601[65] of the California Welfare and Institutions Code, which

60. CALIFORNIA LEGISLATURE ASSEMBLY, JUVENILE COURT PROCESSES—REPORT OF THE ASSEMBLY INTERIM COMMITTEE ON CRIMINAL PROCEDURE 5 (1970).

61. CAL. WELF. & INST'NS CODE §§ 600-01 (West 1972 & Supp. 1975).

62. *See In re* J.L.D., 25 Cal. App. 3d 86, 100 Cal. Rptr. 601 (1972) (since the juvenile court exists to help juvenile offenders, rather than to punish them, a decision to commit a minor to the Youth Authority may not be made until the issue of the court's jurisdiction has been raised and all relevant evidence heard); T.N.G. v. Superior Ct., 4 Cal. 3d 767, 484 P.2d 981, 94 Cal. Rptr. 813 (1971) (the underlying protective philosophy of the juvenile court prevents the adverse use of juvenile arrest and detention records); *In re* William S., 10 Cal. App. 3d 944, 89 Cal. Rptr. 685 (1970) (juvenile offender should not have been committed to the Youth Authority without a showing that treatment in a less restrictive program was ineffective in rehabilitating him).

63. *See* CAL. WELF. & INST'NS CODE § 502 (West Supp. 1975). "The purpose of this chapter is to secure for each minor under the jurisdiction of the juvenile court such care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the State; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety and protection of the public cannot be adequately safeguarded without removal; and, when the minor is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents. This chapter shall be liberally construed to carry out these purposes." *Id.*

64. *See, e.g., id.* §§ 5001-02, 5008(c), 5150, 5213, 5230, 5250, 5260, 5300, 5303, 5327, 6250 (West 1972 & Supp. 1975).

65. *Id.* § 601 (West Supp. 1975). Section 601 is entitled "minors habitually refusing to obey parents; minors in danger of leading immoral life." This section provides

describes incorrigible minors, and section 600(c)[66] of the Welfare and Institutions Code, which describes youths dangerous to the public because of mental illness, are used to justify the confinement of children whose antisocial behavior is symptomatic of mental illness. If the behavior which has led to confinement is a result of a mental disorder, the state has a dual obligation to provide these children with appropriate treatment, under the combined authority of the adult mental patient cases[67] and the "right to treatment"[68] cases for juvenile offenders.

The Right to Adequate and Effective Treatment

Although there can be little question that juvenile court wards in California have a right to treatment under case law and by statute,[69] the issue arises as to what type of treatment the state must provide in order to satisfy constitutional and statutory requirements. The courts have articulated numerous standards by which to measure the treatment provided by the state to its wards.[70] Among the varying standards which Professor Schwitzgebel[71] of Harvard Medical School finds to have been used by the courts are "suitable" treatment,[72] "adequate" treatment,[73] "effective" treatment,[74] "curative" treatment,[75] "appropriate"

that "any person under the age of 18 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his parents, guardian, or custodian, or who is beyond the control of such person, or who from any cause is in danger of leading an idle, dissolute, lewd or immoral life, is within the jurisdiction of the juvenile court which may adjudge such person to be a ward of the court." *Id.* With one exception, the dispositions available to the juvenile court are the same for these minors as they are for juveniles who have committed offenses which would be crimes if perpetrated by an adult. *See* CALIFORNIA LEGISLATURE ASSEMBLY, JUVENILE COURT PROCESSES—REPORT OF THE ASSEMBLY INTERIM COMMITTEE ON CRIMINAL PROCEDURE 5 (1970).

66. CAL. WELF. & INST'NS CODE § 600 (West 1972). See note 114 *infra.*

67. See notes 15-16 *supra.*

68. See note 47 *supra.*

69. See notes 62-64 *supra.*

70. See Schwitzgebel, *Right to Treatment for the Mentally Disabled: The Need for Realistic Standards and Objective Criteria,* 8 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 513 (1973).

71. *Id.* at 519.

72. Millard v. Cameron, 373 F.2d 468, 472 (D.C. Cir. 1966); Rouse v. Cameron, 373 F.2d 451, 456, 459 (D.C. Cir. 1966); Application of D.D., 118 N.J. Super. 1, 5, 285 A.2d 283, 287 (App. Div. 1971).

73. Rouse v. Cameron, 373 F.2d 451, 456 (D.C. Cir. 1966); Wyatt v. Stickney, 325 F. Supp. 781, 785 (M.D. Ala. 1971), 334 F. Supp. 1341 (M.D. Ala.), 344 F. Supp. 373 (M.D. Ala. 1972), 344 F. Supp. 387 (M.D. Ala.), *aff'd sub. nom.* Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974); Cook v. Cicone, 312 F. Supp. 822 (W.D. Mo. 1970); Nason v. Superintendent of Bridgewater State Hosp., 353 Mass. 604, 233 N.E.2d 908 (1968).

74. Powell v. Texas, 392 U.S. 514, 529 (1968); Wyatt v. Stickney, 334 F. Supp. 1341, 1343 (M.D. Ala. 1971), 344 F. Supp. 373 (M.D. Ala. 1972), 344 F. Supp. 387

treatment,[76] "proper" treatment,[77] "realistic opportunity to be cured or improve,"[78] and "bona fide effort to cure or improve patient."[79] Schwitzgebel notes that behind the diverse standards announced by the courts appears to be the assumption that treatment should be effective in order to satisfy constitutional and statutory requirements.[80]

In the early right to treatment cases, the courts appeared reluctant to define with any degree of specificity what types of treatment were required. In *In re Jones*,[81] for example, a District of Columbia court noted that psychiatry is a developing discipline and that a variety of treatment alternatives are open to any hospital administrator.[82] The court therefore concluded that courts "may not decide whether the Hospital has made the best possible decision, but only that it has made a permissible decision based on relevant information and within the broad range of discretion given to the Hospital administrator."[83]

More recent decisions, however, indicate that courts are prescribing quantitative standards as well as specific qualitative measures to be implemented by the state in order to guarantee adequate treatment to inmates in state facilities. In *Martarella v. Kelley*,[84] the court enunciated specific standards and criteria by which to evaluate the effectiveness of the juvenile institution in question. This direct court intervention into the internal administration of the facility was justified on grounds of the history of "ignored reports over a period of generations . . . all urging reform and improvement of juvenile detention facilities, and all being largely, if not altogether disregarded and treated as a mere pious sentiment."[85] Among the specific actions ordered by the court in *Martarella* to insure adequate treatment were adding more staff mem-

(M.D. Ala.) *aff'd sub nom.* Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974); Clatterbuck v. Harris, 295 F. Supp. 84, 86 (D.D.C. 1968); People v. Kearse, 28 App. Div. 2d 910, 282 N.Y.S.2d 136, 137 (1967).

75. *In re* Maddox, 351 Mich. 358, 362, 88 N.W.2d 470, 472 (1967).

76. Clatterbuck v. Harris, 295 F. Supp. 84, 86 (D.D.C. 1968); People v. Kearse, 28 App. Div. 2d 910, 282 N.Y.S.2d 136, 137 (1967).

77. *In re* Jones, 338 F. Supp. 428 (D.D.C. 1972).

78. Wyatt v. Stickney, 344 F. Supp. 373, 374 (M.D. Ala. 1972), 344 F. Supp. 387 (M.D. Ala.), *aff'd sub nom.* Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974).

79. Covington v. Harris, 419 F.2d 617, 625 (D.C. Cir. 1969); Rouse v. Cameron, 373 F.2d 451, 456 (D.C. Cir. 1966).

80. Schwitzgebel, *Right to Treatment for the Mentally Disabled: The Need for Realistic Standards and Objective Criteria*, 8 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 513, 520 (1973).

81. 338 F. Supp. 428 (D.D.C. 1972).

82. *Id.* at 429.

83. *Id. See also* Tribby v. Cameron, 379 F.2d 104, 105 (D.C. Cir. 1967).

84. 359 F. Supp. 478 (S.D.N.Y. 1973).

85. *Id.* at 482.

bers, providing staff with better training, and making psychiatrists available to the inmates.[86]

In *Morales v. Turman*,[87] a case which also involved a juvenile detention facility, the court was even more specific in its ruling on what constituted adequate treatment. The court found that the children incarcerated in the institution had a right to

> care that conform[ed] to the following minimally acceptable professional standards:
>
> 1. Adequate infirmary facilities, properly utilized.
>
> 2. Access to medical staff without delay or interference.
>
> 3. A psychiatric staff, consisting of psychiatrists certified by the American Board of Psychiatry and Neurology as qualified in the field of child psychiatry, sufficient in number to assure treatment of individual children who require individual therapy; effective training and supervision of other treatment staff; and coordination of treatment programs.
>
> 4. A psychological staff, to consist of psychologists holding either Master's degrees or Doctorates in psychology and experienced in work with adolescents, sufficient in number to meet the needs of the children.
>
> 5. Provision of either individual or group psychotherapy for every child for whom it is indicated.
>
> 6. Sufficient psychiatric nursing assistance.
>
> 7. Sufficient medical staff and nursing staff to provide effective preventive and curative care for the health of all juveniles.
>
> 8. Freedom from indiscriminate, unsupervised, unnecessary, or excessive medication, particularly psychotropic medication.[88]

Adequacy of Treatment Received by California Juveniles

Application of the standards enunciated in *Martarella* and *Morales* reveals serious doubt whether the mentally ill children committed to state hospitals in California are receiving "adequate" or "effective" treatment.[89] Following the 1969 incident at Napa, a Select Committee on Services for Mentally Ill and Handicapped Children was created by the California Assembly.[90] In January of 1970, a preliminary report was submitted to this committee by Arthur Bolton & Associates, who had been hired to investigate the problem.[91]

This investigation revealed many of the same conditions within the Napa and Camarillo State Hospitals[92] that had prompted court interven-

86. *Id.* at 483-86.
87. 383 F. Supp. 53 (E.D. Tex. 1974).
88. *Id.* at 105.
89. *See* PRELIMINARY REPORT, *supra* note 1, at 1.
90. *See id.*
91. *Id.*
92. These two institutions are the only California state hospitals with special facil-

tion in *Morales*: shortage of properly trained staff and lack of ongoing training programs for them, dull and unpleasant physical surroundings, overreliance on the ward television set as a substitute for active treatment programs, crowded dormitories, inadequate supervision of patients, and insufficient regulation of the Children's Unit staff by the hospital administration.[93] The preliminary Bolton report to the Assembly Select Committee went so far as to state that "the State hospital is not an appropriate place for the treatment of children."[94]

The language of section 502 of the Welfare and Institutions Code,[95] which explains the philosophy behind the California Juvenile Court Law, presupposes that when the state removes a child from the custody of his parents, the state will provide "custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents."[96] Patrick Murphy, a critic of the American juvenile justice system, has pointed out that if the state is to assume the responsibility for removing a child from its natural family, the state then has a duty to properly care for the child. Obviously, neglect of the child's health and welfare is no more morally and legally justified when perpetrated by the government than when the natural parent is at fault.[97]

Although it is alarming that conditions at the California state hospitals have been found to be inadequate for children, it is even more distressing that many of the most severely disturbed children within the California juvenile justice system are getting no treatment at all, as there is a severe shortage of facilities that are willing to accept a violent or aggressive juvenile court ward.[98]

On July 25, 1974, Supervisor James A. Hayes submitted a motion to the Board of Supervisors of Los Angeles County which called for adequate treatment for these severely mentally ill juvenile court wards. Supervisor Hayes noted that children who come under section 600(c) of the Welfare and Institutions Code, which describes youths who have

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ities for children under 15 years old. Adolescent programs, designed for children 15 and older, have been initiated at DeWitt and Mendocino State Hospitals. Children under the age of 15 are admitted to other state hospitals only for short stays; if longer treatment is required, they are transferred to Napa or Camarillo. ARTHUR S. BOLTON & ASSOCIATES, A REPORT TO THE ASSEMBLY SELECT COMMITTEE ON MENTALLY ILL AND HANDICAPPED CHILDREN 147 (1970).

93. PRELIMINARY REPORT, *supra* note 1, at 4-6.

94. *Id.* at 10.

95. See note 63 *supra.*

96. CAL. WELF. & INST'NS CODE § 502 (West 1972).

97. P. MURPHY, OUR KINDLY PARENT—THE STATE 122 (1974).

98. See text accompanying notes 4-6 *supra. See also* Motion by Supervisor James A. Hayes, Exhibit A, in Petition for Writ of Mandate, Doe v. Hufford, Civil No. 113831 (L.A. County Super. Ct., filed Jan. 29, 1975).

been declared "physically dangerous to the public because of mental or physical deficiency, disorder, or abnormality," were not receiving adequate care and treatment. The supervisor stated that when the probation department sent these children to the Camarillo State Hospital or to the psychiatric unit of the University of Southern California Medical Center, they were often returned to the juvenile hall because they were "too hard to handle."[99] Hayes then described the problem in greater detail:

> [B]oth Juvenile Hall and MacLaren Hall are not designed and [are] ill-equipped in facilities and personnel to treat these cases . . . often violent, assaultive or self-destructive.
>
> . . . .
>
> I'm told that approximately 70 of these children currently are wards of Juvenile Court. But, in truth, if our responsibility to identify a child as mentally ill were carried through that number would be far greater. Proper psychiatric evaluation of children in our juvenile system is a myth.
>
> There is an extreme reluctance on the part of our Juvenile Courts to attach what is considered the stigma of 600(c) to a child and sadly—the courts are painfully aware there are no facilities to care for a child placed in that category.
>
> I have gathered evidence on specific cases where children are or have been confined under what only can be described as snake pit conditions because facilities have not been provided.[100]

The Lack of Suitable Facilities and the Juvenile Court Ward's Right to Treatment

The issues raised by Supervisor Hayes are illustrated in a recent Los Angeles case. The fact situation in *Doe v. Hufford*[101] demonstrates the dilemma faced by conscientious juvenile court officials when confronted by a court ward who is deemed "too violent" for placement in the state hospital or other public facility. The plaintiff in *Doe*, a severely disturbed teenager, was adjudicated a ward of the Los Angeles juvenile court in November 1973, pursuant to section 601 of the Welfare and Institutions Code.[102] Subsequently, Ms. Doe was confined in the juvenile hall from November, 1973 until June 6, 1974, except for

99. Motion by Supervisor James A. Hayes at 1, Exhibit A, in Petition for Writ of Mandate, Doe v. Hufford, Civil No. 113831 (L.A. County Super. Ct., filed Jan. 29, 1975).

100. *Id.* at 1-2.

101. Civil No. 113831 (L.A. County Super. Ct., filed Jan. 29, 1975). Ms. Doe's name and the name of the hospital where she was treated have been omitted in order to protect Ms. Doe's privacy.

102. The petition alleged that Ms. Doe was beyond her parents' control, that she had assaulted her father, that she left home without permission, and that she had assaulted a police officer.

three days spent at one hospital and one week at another. She was discharged from each of these hospitals because of her violent tendencies. When the hospitals found that they could not treat her, she was returned to juvenile hall, which had no treatment facilities for severely disturbed children. While Ms. Doe spent nearly seven months in isolation at juvenile hall, the probation department approached other psychiatric hospitals in the Los Angeles area on her behalf, but all refused to treat her, owing to her violent and self-destructive symptoms.[103]

On June 5, 1974, the juvenile court placed Ms. Doe on a temporary basis in a private psychiatric hospital in the Los Angeles area.[104] This placement was finalized by a court order of June 21, 1974.[105] In his order, Judge Hogoboom justified placement of Ms. Doe in an expensive private hospital on the grounds that she had been detained far too long in the juvenile hall, that she was severely disturbed, and that no other facilities were available for her care and treatment.[106] The judge noted that it was almost impossible to place adolescents with a history of violent and aggressive behavior, especially those who had previously been hospitalized or diagnosed as schizophrenic. According to the chief psychiatrist of the Los Angeles County Probation Department's psychiatric clinic, such minors were refused admission to both public and private treatment programs because of their history of attacks on hospital staff, other patients, and property.[107]

Judge Hogoboom indicated in the order that Ms. Doe's placement in the private hospital on June 5, 1974, had been on the understanding that her parents' medical insurance would cover the cost of her treatment there. When it was discovered that the insurance would not cover the treatment, the juvenile court intervened. In spite of the facts that the cost of treatment at this hospital far exceeded the usual rate, and that Ms. Doe's violent outbreaks had cost hundreds of dollars in property damage to the hospital in her first week there, the court ordered that her treatment in this facility continue, at county expense, while other avenues of funding were explored. The court concluded its order with the statement that "[t]he question we may well need to pose for ourselves as we decide this girl's future is not can we afford to help her but rather can we afford not to."[108]

103. *See* Petition for Writ of Mandate at 3-4, Doe v. Hufford, Civil No. 113831 (L.A. County Super. Ct., filed Jan. 29, 1975).

104. *Id.* at 4.

105. Minute Order of Judge Hogoboom, Exhibit L, in Petition for Writ of Mandate, Doe v. Hufford, Civil No. 113831 (L.A. County Super. Ct., filed Jan. 29, 1975).

106. *Id.* at 2.

107. *Id. quoting* Dr. Scott Schell, Chief Psychiatrist of the Los Angeles County Probation Department's Psychiatric Clinic.

108. *Id.* at 8.

By November 14, 1974, when the hospital made a claim against Los Angeles County for payment for Ms. Doe's treatment, the bill for her care at the hospital totaled $21,993.20.[109] The psychiatrist's bill for the same period of time amounted to $3,640.00.[110] In January of 1975, the Los Angeles counsel informed the hospital by letter that the county would contribute toward Ms. Doe's treatment only $550.00 per month, which is the maximum board and care rate established by the Board of Supervisors of Los Angeles County for placement of juvenile court wards in private institutions not under contract with Los Angeles County.[111] As a result of the county's refusal to pay for the full cost of Ms. Doe's treatment, a petition for writ of mandate and a complaint for injunctive and declaratory relief were filed on her behalf on January 29, 1975.[112]

Ms. Doe's claim for relief was based in part on sections 727, 731, 739, and 741 of the Welfare and Institutions Code, the due process and equal protection clauses of the United States and California Constitutions, and the purpose clause of the California Juvenile Court Law.[113]

The sections of the Welfare and Institutions Code on which Ms. Doe relied discuss various types of treatment available to youths subject to juvenile court jurisdiction. Section 727 of the Welfare and Institutions Code provides that

> When a minor is adjudged a dependent child of the court, on the ground that he is a person described by Section 600, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of such minor, including medical treatment . . . .[114]

109. Petition for Writ of Mandate at 6, Doe v. Hufford, Civil No. 113831 (L.A. County Super. Ct., filed Jan. 29, 1975).

110. *Id.*

111. *See* Letter from John H. Larson, County Counsel, County of Los Angeles, to Ms. Doe's hospital, Jan. 3, 1975, Exhibit J, in Petition for Writ of Mandate, Doe v. Hufford, Civil No. 113831 (L.A. County Super. Ct., filed Jan. 29, 1975). *See* note 101 *supra.*

112. *See* note 101 *supra.* Ms. Doe has made great progress, has been released from the hospital, and is presently enrolled in a university. Los Angeles County, meanwhile, has paid approximately $26,000 toward Ms. Doe's hospital and psychiatrist bills. Interview with Ms. Doe's attorney, Robert L. Walker, Youth Law Center, in San Francisco, Cal., Nov. 14, 1975.

113. *See* Petition for Writ of Mandate at 14, Doe v. Hufford, Civil No. 113831 (L.A. County Super. Ct., filed Jan. 29, 1975).

114. CAL. WELF. & INST'NS CODE § 727 (West Supp. 1975). Section 600 of the Welfare and Institutions Code describes dependent or neglected persons subject to the jurisdiction of the juvenile court. These include persons under 18 who are in need of parental care or control, homeless children, children who are dangerous because of mental illness, and children who are neglected or mistreated by their parents. *Id.* § 600(a)-(d) (West 1972).

Section 727 further allows the court to commit the minor to the custody of a "probation officer, to be boarded out or placed in some . . . suitable private institution . . . ."[115]

Section 731 provides for treatment of minors who have violated a law or a juvenile court order,[116] while section 739 authorizes the court to obtain needed "medical, surgical, dental or other remedial care" for its wards after notice to the child's parents.[117] Section 741 provides that the probation officer may

> obtain the services of such psychiatrists, psychologists, or other clinical experts as may be required to assist in determining the appropriate treatment of the minor and as may be required in the conduct or implementation of such treatment.[118]

Section 741 further requires the county to pay for such psychiatric services.[119]

It seems clear based on the foregoing Welfare and Institutions Code sections that the court order of June 21, 1974, ordering the county to pay for private care for Ms. Doe was valid, especially in view of the fact that all other avenues of less expensive treatment had been exhausted. The alternative to the private care was that Ms. Doe, who had committed no crime, would remain in solitary confinement in juvenile hall, receiving no treatment at all.

Nonetheless, counsel for Los Angeles County read sections 900 and 913 of the Welfare and Institutions Code as justification for the county's refusal to pay for Ms. Doe's court-ordered private treatment. The county interpreted section 900 as *prohibiting* it from paying more than the maximum rate previously established for court wards in private facilities. Section 900(a) reads as follows:

> If it is necessary that provision be made for the expense of support and maintenance of a ward or dependent child of the juvenile court . . . the order providing for the care and custody of such ward, dependent child or other minor person shall direct that the whole expense of support and maintenance of such ward, dependent child or other minor person, up to the amount of twenty dollars ($20) per month be paid from the county treasury and may direct that an amount up to any maximum amount per month established by the board of supervisors of the county be so paid. The board of supervisors of each county is hereby authorized to establish, either generally or for individual wards or dependent children or according to classes or groups of wards or dependent children, a maximum amount which the court may order the county to pay for such support and maintenance. All orders made pursuant to the provisions

115. *Id.* § 727(c) (West Supp. 1975).
116. *Id.* § 731 (West 1972).
117. *Id.* § 739 (West Supp. 1975).
118. *Id.* § 741 (West 1972).
119. *Id.*

> of this section shall state the amounts to be so paid from the county treasury, and such amounts shall constitute legal charges against the county.[120]

Los Angeles County refused to pay more than the $550 per month maximum amount established by the Los Angeles County Board of Supervisors.[121] Although the language of section 900 would presumably allow the board of supervisors to establish a maximum rate for the care of Ms. Doe as an individual that would cover the full cost of her court-ordered treatment, the county did not feel compelled by either statute or court order to do so.

The county also relied on the fact that the language of section 913 of the Welfare and Institutions Code, which allows the county to contract with private hospitals and physicians for the care of juvenile court wards, is discretionary rather than mandatory.[122]

In light of the arguments outlined above, the pertinent question appears to be whether a county may refuse to pay for the court-ordered treatment of a juvenile court ward when treatment in an expensive private facility is the only viable alternative to no treatment at all. One commentator[123] has framed this issue as follows: "May juvenile courts abrogate the promise of treatment and rehabilitation to any juvenile, regardless of his condition, handicap, or behavior problem, because of the lack of adequate facilities or treatment capabilities?"[124]

Lack of Funds or Existing Facilities As a Basis for Denial of Constitutional Rights

Judge Bazelon of the District of Columbia Circuit Court of Appeals addressed this issue in *Haziel v. United States*[125] and concluded, "we . . . cannot ignore the mockery of a benevolent statute unbacked by adequate facilities."[126] Other courts have recognized that inadequate treatment of mental patients cannot be justified by lack of re-

120. *Id.* § 900 (West Supp. 1975).

121. Letter from John H. Larson, County Counsel, County of Los Angeles, to Ms. Doe's hospital, Jan. 3, 1975, Exhibit J, in Petition for Writ of Mandate, Doe v. Hufford, Civil No. 113831 (L.A. County Super. Ct., filed Jan. 29, 1975). See note 101 *supra.*

122. CAL. WELF. & INST'NS CODE § 913 (West 1972). This section clearly provides authority under which Los Angeles County could have contracted with the hospital and Ms. Doe's psychiatrist for any amount, up to and including the full cost of Ms. Doe's treatment.

123. Kittrie, *Can the Right to Treatment Remedy the Ills of the Juvenile Process?*, 57 GEO. L.J. 848 (1969).

124. *Id.* at 875.

125. 404 F.2d 1275 (D.C. Cir. 1968).

126. *Id.* at 1280.

sources,[127] holding that lack of funds or facilities is no excuse for a state's neglect of its wards.[128]

In *Morales v. Turman*,[129] the court found that juveniles incarcerated subject to the jurisdiction of the Texas Youth Authority had both a statutory right and a constitutional right to treatment, but that such rights had been abridged because the institutions in question failed to provide minimal elements of an adequate treatment plan.[130] The court held that a state may not deny juvenile court wards' constitutional rights by refusing to create alternatives to confinement in substandard institutions. The court ordered two juvenile detention facilities closed, and also insisted that alternative facilities be created to meet the needs of Texas juvenile court wards. The court noted that many of the children incarcerated in detention centers could be better treated in less controlled environments. Recognizing, however, that some severely disturbed children required close supervision in a restrictive facility, the court stated that these juveniles must receive *actual* treatment while being so confined: "They may not be abandoned as hopeless and simply warehoused until they grow too old for juvenile facilities."[131] The court insisted that those children with the most severe problems must receive individualized attention.[132]

In *Martarella v. Kelley*,[133] a case in which the right to treatment was extended to children classified as "Persons in Need of Supervision" (PINS), the court ordered the City of New York to increase the numbers of staff at children's detention centers in order that better treatment might be provided, stating

> A deficiency of personnel . . . cannot be accepted either logically or constitutionally as a rationale for defining the needs of those entitled to treatment. If more staff members are necessary to do the job, the City must furnish them in order to meet its constitutional obligations.[134]

The court recognized that to comply with this directive, the city would have to increase its expenditures; it justified the order by saying that "the taxpayers are called upon only to meet the constitutional rights of the City's own children."[135]

127. Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974); Rouse v. Cameron, 373 F.2d 451 (D.C. Cir. 1966).

128. Wyatt v. Aderholt, 503 F.2d 1305, 1314-15 (5th Cir. 1974); Holt v. Sarver, 309 F. Supp. 362, 385 (E.D. Ark. 1970), *aff'd*, 442 F.2d 304 (8th Cir. 1971).

129. 383 F. Supp. 53 (E.D. Tex. 1974).

130. *Id.*

131. *Id.* at 125.

132. *Id.* at 126.

133. 359 F. Supp. 478 (S.D.N.Y. 1973).

134. *Id.* at 481.

135. *Id.* at 482.

Courts considering the rights of adult prisoners have drawn analogous conclusions, holding that the state may not deny constitutional rights because of lack of funds or existing facilities. In *Hamilton v. Love*,[136] prisoners awaiting trial sought declaratory and injunctive relief based on their contention that the conditions at an Arkansas county jail subjected them to cruel and unusual punishment, depriving them of eighth and fourteenth amendment rights. Defendants pointed out that a new jail was being built and that extraordinary measures were being taken to bring prisoners speedily to trial in order to relieve the "gross overcrowding"[137] in the jail. Defendants also stipulated that they would make "reasonable improvements." Two months later, however, the court found that many of the worst conditions had not been remedied. Defendants contended that to make costly physical improvements to the old jail would be "throw[ing] good money after bad,"[138] as the old jail would be used for only a few more years. The court held nevertheless that

> [i]nadequate resources can never be an adequate justification for the state's depriving any person of his constitutional rights. If the state cannot obtain the resources to detain persons awaiting trial in accordance with minimum constitutional standards, then the state will simply not be permitted to detain such persons.[139]

Dr. Birnbaum suggested a similar remedy in his first right to treatment article:[140] if the state fails to provide treatment for its involuntarily civilly committed mental patients, it should be required to release them, in spite of possible dangers to the community which might result from their release. Although the Supreme Court in *Donaldson* declined to reach this conclusion, it did rule that nondangerous patients must be released if they are not being treated.[141]

The treat or release idea, however, not only poses a potential threat to the safety of the community; it is not always in the best interest of the patient. In *Lake v. Cameron*,[142] the Court of Appeals for the District of Columbia found that the plaintiff, who had been committed to a

136. 328 F. Supp. 1182 (E.D. Ark. 1971).

137. *Id.* at 1185.

138. *Id.* at 1190.

139. *Id.* at 1194. *See also* Rozecki v. Gaughan, 459 F.2d 6 (1st Cir. 1972) (inadequate heat in correctional institution, justified by state as owing to lack of funds, held to constitute cruel and unusual punishment in violation of eighth amendment); Jackson v. Bishop, 404 F.2d 571 (8th Cir. 1968) (state's lack of funds no excuse for use of strap as punishment device). The court in *Jackson* emphasized: "Humane considerations and constitutional requirements are not, in this day, to be measured by dollar considerations." *Id.* at 580.

140. Birnbaum, *The Right to Treatment*, 46 A.B.A.J. 499, 503 (1960).

141. O'Connor v. Donaldson, 422 U.S. 563, 576 (1975).

142. Lake v. Cameron, 364 F.2d 657 (D.C. Cir. 1966).

mental hospital after police had found her wandering aimlessly in the streets, should be offered a less restrictive alternative than confinement in the public mental hospital. One such suggested alternative was that the woman wear an identity tag so that police could return her to her home if she wandered away again.[143] While agreeing with the majority that Mrs. Lake should not be incarcerated in the public mental hospital, Judge J. Skelly Wright was appalled at the idea of returning an infirm and somewhat senile old woman to the streets with only an identity card to protect her. Judge Wright reminded the majority that the plaintiff had previously been molested in her wanderings. He voiced his concern that death from attackers or natural causes might be the result of Mrs. Lake's unconditional release.[144]

Similar objections can be raised to the release of severely disturbed juveniles who are not presently receiving adequate care in state institutions or county juvenile halls. Once judicial authority has established that the state has a right to confine and a duty to treat a juvenile, the state should not be permitted because of inadequate funds to abrogate its legal and moral obligation to provide treatment.

Compelling Adequate and Effective Treatment

The juvenile courts in California derive their traditional powers from Article Six[145] of the state constitution. In addition, these courts are invested with jurisdiction to perform certain executive functions. For example, sections 509 and 509.5 of the Welfare and Institutions Code provide for judicial inspection of juvenile detention centers. If the judge finds, on inspection, that a particular youth facility is inadequate, he or she may order the institution closed until the problems have been corrected.[146] It might be inferred from such provisions granting executive authority to the juvenile court that, as a court of equity, a California juvenile court may direct the appropriate governmental body to provide whatever treatment is necessary for its wards in order to give force and meaning to statutory and constitutional guarantees of treatment.[147]

The issue of the extent to which the juvenile court may compel county action was raised in the pleadings in *Doe v. Hufford*,[148] but there does not seem to be any case law on the subject in California. Similar

143. *Id.* at 661.

144. *Id.* at 664.

145. "The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts. All except justice courts are courts of record." CAL. CONST. art. VI, § 1.

146. CAL. WELF. & INST'NS CODE §§ 509, 509.5 (West 1972 & Supp. 1975).

147. *Cf.* United States v. Alsbrook, 336 F. Supp. 973 (D.D.C. 1971).

148. Petitioner's Memorandum of Points and Authorities at 19-20, Doe v. Hufford, Civil No. 113831 (L.A. County Super. Ct., filed Jan. 29, 1975).

cases, however, have arisen in at least two other jurisdictions, and in both instances, the court ruled that it possessed ample authority to order the executive branch to take specific action in order to guarantee the right to treatment for juvenile court wards.

In *In re Joyce Z*,[149] a Pennsylvania juvenile court was faced with the problem of a severely retarded child who required lifelong special care in order to survive. The administrator of the state hospital and school for the retarded testified that owing to overcrowding and understaffing, Joyce would receive only minimal custodial care at the state facility. A special foster home was found which could provide the necessary care and treatment, but the cost was higher than the usual county allocation for foster care. The juvenile court, after ruling that Joyce had a right to treatment based on constitutional as well as statutory grounds, ordered treatment for her in the special foster home at state expense and further ordered county child welfare and mental health agencies to cooperate in assigning the youth a caseworker.

In *In re Welfare of J.E.C.*,[150] a Minnesota court specifically ordered the state's Department of Corrections to provide a program for dangerous juveniles which would assure the protection of the public while at the same time treating the juvenile offender. The court concluded:

> It is the function of the Courts to determine when a person should be deprived of his liberty, whether this deprivation is to be by probation, incarceration, or otherwise and thus the method to be used in rehabilitating him. The Courts also have the function of determining whether the public safety requires a person's incarceration. The judicial branch of government thus may require the executive branch to carry out the needs of the judicial system, and to fulfilll its statutory duties, by providing a program which will both better habilitate children, and better protect the public . . . .[151]

By the same type of reasoning, it could be argued that the court order of June 21, 1974,[152] which directed Los Angeles County to pay the cost of Ms. Doe's private care, was a valid and necessary exercise of judicial authority.

In spite of the court order, however, the Los Angeles Board of Supervisors, viewing Welfare and Institutions Code sections 900 and 913 as discretionary, ignored the directions of the juvenile court and chose neither to pay the full cost of Ms. Doe's care, nor to negotiate a

149. 7 JUVENILE CT. DIGEST 14-16 (1975) (No. 2035-69, Pa. Ct. C.P., Allegheny County 1975).

150. 6 JUVENILE CT. DIGEST 459 (1975) (No. 75604, Minn. Dist. Ct., Hennepin County, Feb., 1975).

151. *Id.* at 463-64.

152. Minute order of Judge Hogoboom, Exhibit L, in Petition for Writ of Mandate, Doe v. Hufford, Civil No. 113831 (L.A. County Super. Ct., filed Jan. 29, 1975).

special contract with her hospital.[153] Counsel for Ms. Doe argued that to elect not to contract for such services is to thwart the clear intent of these statutes and to deny adequate treatment to the severely disturbed juvenile court ward for whom no public treatment facilities currently exist.[154]

An administrative decision not to contract for desperately needed facilities appears possible if sections 900 and 913 of the Welfare and Institutions Code are narrowly construed. Nevertheless, the practical result of such an interpretation of these code sections is that many severely disturbed juveniles, like Ms. Doe, whom public institutions refuse to accept because they are too "hard to handle," are kept for long periods of time in solitary confinement in juvenile halls.[155] Such lengthy confinement of mentally ill minors in facilities which do not provide psychiatric treatment may be cruel and unusual punishment under the tests of *Nelson* and *Robinson*.[156] Moreover, confinement without treatment fails to provide the *quid pro quo* required to justify the denial of full due process rights to juveniles as well as to mental patients. A narrow construction of sections 900 and 913 as applied in the *Doe* case may therefore deprive mentally ill juveniles of their eighth and fourteenth amendment rights. When a right originating in the United States Constitution conflicts with a state statute, the supremacy clause requires that the constitutional right prevail.[157] Furthermore, such an interpretation of these sections contravenes the therapeutic purposes of section 502 of the Welfare and Institutions Code.[158] Therefore, in order to avoid unconstitutional results, to comply with the stated purposes of the California Juvenile Court Law, and to give force and meaning to sections 727, 731, 739, and 741 of the Welfare and Institutions Code, sections 900 and 913 must be liberally construed according to the dictates of the purpose clause of the Juvenile Court Law.[159] Such liberal construction would avoid the harsh results of Los Angeles Coun-

153. Letter from John H. Larson, County Counsel, County of Los Angeles, to Ms. Doe's hospital, Jan. 3, 1975, in Petition for Writ of Mandate, Doe v. Hufford, Civil No. 113831 (L.A. County Super. Ct., filed Jan. 29, 1975). See note 101 *supra*.

154. Petitioner's Memorandum of Points and Authorities at 22, Doe v. Hufford, Civil No. 113831 (L.A. County Super. Ct., filed Jan. 29, 1975).

155. *See* Motion by Supervisor James A. Hayes at 2, Exhibit A, in Petition for Writ of Mandate, Doe v. Hufford, Civil No. 113831 (L.A. County Super. Ct., filed Jan. 29, 1975).

156. See notes 49-59 & accompanying text *supra*.

157. U.S. CONST. art. VI, § 2; see Reitman v. Mulkey, 387 U.S. 369 (1967); McCray v. United States, 195 U.S. 27 (1904); Gibbons v. Ogden, 22 U.S. (9 Wheat.) 186 (1824); Cohens v. Virginia, 19 U.S. (6 Wheat.) 264 (1821); M'Culloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819).

158. See note 63 *supra*.

159. *Id.*

ty's interpretation and would insure that counties would be *required* to furnish needed care and treatment to their juvenile court wards.

The Need for Treatment Programs at the Local Level

Two recent cases have, paradoxically, exacerbated the problem of where to place mentally ill juveniles by extending to children due process rights formerly reserved for adults.

The court of appeal in *In re L.L.*[160] held that the juvenile court could not directly place minors in a state mental hospital without a conservatorship proceeding pursuant to the provisions of the Lanterman-Petris-Short (LPS) Act.[161] The petitioner in *L.L.* had been placed by the juvenile court in Napa State Hospital following a section 601[162] adjudication. The court of appeal held that L. could not be committed to the state mental hospital unless he or his parents agreed to the hospitalization on a voluntary basis[163] or a conservatorship proceeding was instituted pursuant to Welfare and Institutions Code section 5350(a).[164] The court emphasized that a conservator may be appointed only if the minor in question is "gravely disabled"[165] as a result of a mental disorder.[166] Although the juvenile court is empowered to order psychiatric treatment for its wards,[167] the court of appeal in *L.L.* ruled

160. 39 Cal. App. 3d 205, 114 Cal. Rptr. 11 (1974).

161. CAL. WELF. & INST'NS CODE §§ 5000-401 (West 1972 & Supp. 1975).

162. See note 65 *supra.*

163. *See* CAL. WELF. & INST'NS CODE § 6000 (West Supp. 1975) (providing for voluntary admission to state mental hospitals and institutions). Section 6000(b) allows a parent or guardian to "volunteer" a child into the institution. *Id.* § 6000(b). This procedure has been criticized. *See* Ellis, *Volunteering Children: Parental Commitment of Minors to Mental Institutions,* 62 CAL. L. REV. 840 (1974).

164. CAL. WELF. & INST'NS CODE § 5350(a) (West 1972) (providing that conservators may be appointed for "gravely disabled" minors).

165. *Id.* The term "gravely disabled" is defined as describing "a condition in which a person, as a result of a mental disorder, is unable to provide for his basic personal needs for food, clothing, or shelter." *Id.* § 5008(h) (West Supp. 1975). Obviously, this definition is not particularly illuminative in the case of young children, who cannot be expected to provide their own food, clothing, and shelter, even if they enjoy good mental health. This problem was recognized by the California Supreme Court in *In re Michael E.*: "Although a minor may not be legally responsible to provide for his basic personal needs, or may suffer disabilities other than a mental disorder which preclude him from so providing, the definition is nevertheless applicable. A minor is 'gravely disabled' within the meaning of section 5008, subdivision (h)(1), when the trier of fact, on expert and other testimony, finds that disregarding other disabilities, if any, the minor, because of the further disability of a mental disorder, would be unable to provide for his basic personal needs. Immaturity, either physical or mental when not brought about by a mental disorder, is not a disability which would render a minor 'gravely disabled' within the meaning of section 5008." *In re* Michael E., 15 Cal. 3d 183, 192 n.12, 123 Cal. Rptr. 103, 108-09.

166. *In re* L.L., 39 Cal. App. 3d 205, 209, 114 Cal. Rptr. 11, 14 (1974).

167. CAL. WELF. & INST'NS CODE § 741 (West 1972).

that this authority did not include the power to place the juvenile directly in a state mental institution.[168]

In re L.L. was upheld by the California Supreme Court in *In re Michael E.*[169] The juvenile court had committed Michael to the custody of a probation officer " 'for ultimate placement in a private or public facility, including . . . Camarillo State Hospital . . . . ' "[170] The probation officer accordingly proceeded to file a "voluntary" petition for Michael's commitment pursuant to section 6000 of the Welfare and Institutions Code.[171] Michael claimed that the juvenile court order violated his constitutional rights to a jury trial, to due process, and to equal protection of the laws. His arguments were based on the grounds that a conservatorship proceeding had not been invoked and that his commitment was in fact involuntary.[172] The court held that "the [involuntary] commitment of a mentally disordered minor who is a ward of the juvenile court can be accomplished *only* in accordance with the LPS Act."[173] The court noted that a conservator may be recommended only when no suitable alternative is available,[174] that the conservator may commit the minor ward only when specifically authorized to do so by the court,[175] that conservatorship automatically ends after one year,[176] and that the conservatee may petition[177] for a rehearing every six months.[178] The court, pursuant to section 5350 of the Welfare and Institutions Code,[179] expressly ruled that such proceedings would result in commitment only of "gravely disabled" juveniles to the state mental hospitals.[180]

The practical effect of these two decisions is that juvenile courts may no longer directly place their mentally ill wards in the state mental hospitals. Conservatorship proceedings, with all their attendant safeguards, must be initiated, and the minor will be entitled to a jury trial on the issue of whether he is "gravely disabled."[181] As a result, juveniles who are suffering from some form of mental illness but who are not

168. *In re* L.L., 39 Cal. App. 3d 205, 215, 114 Cal. Rptr. 11, 19 (1974).
169. 15 Cal. 3d 183, 538 P.2d 231, 123 Cal. Rptr. 103 (1975).
170. *Id.* at 187, 538 P.2d at 233, 123 Cal. Rptr. at 105.
171. See note 163 *supra.*
172. *In re* Michael E., 15 Cal. 3d at 187-88, 538 P.2d at 233, 123 Cal. Rptr. at 105.
173. *Id.* at 189, 538 P.2d at 235, 123 Cal. Rptr. at 109.
174. CAL. WELF. & INST'NS CODE §§ 5352-54 (West Supp. 1975).
175. *Id.* § 5358.
176. *Id.* §§ 5361-62 (West 1972).
177. *Id.* § 5364.
178. 15 Cal. 3d at 192, 538 P.2d at 237, 123 Cal. Rptr. at 109.
179. See note 164 *supra.*
180. *In re* Michael E., 15 Cal. 3d at 192, 538 P.2d at 237, 123 Cal. Rptr. at 109.
181. *See id.*

within the definition of "gravely disabled" can only be treated outside the state hospital system.[182]

Because of these two decisions, California juveniles are now afforded all of the due process rights granted to adults prior to involuntary commitment. These decisions also mean, however, that mentally ill juveniles who were formerly treated in state mental hospitals, at state expense,[183] will now be a further burden on already inadequate community facilities.[184]

Some Attempted Solutions

Following the decision in *Michael E.*, a committee was formed in San Francisco to work toward a solution to the problem of placing mentally ill juveniles at the community level.[185] A new facility for disturbed and delinquent adolescents, the Adolescent Residential Treatment Service (ARTS), has recently been established in San Francisco.[186] This much-needed resource will serve adolescents between the ages of twelve and seventeen for stays of six months to one year. In addition to a fifteen-bed residential program, ARTS will offer a day treatment program for an additional fifteen patients. The staff also plans to provide a special education program as well as family therapy.[187]

In the Los Angeles area, as a result of the efforts of Supervisor Hayes,[188] a special unit, "Five B," was established at Camarillo State Hospital on January 2, 1975, for the aggressive, "acting out" young patient. Juveniles are referred to Five B from the juvenile court following a screening process which determines that they are "hard-to-handle" youths who cannot be helped elsewhere. Eighteen youngsters are currently being treated in this program. Procedures for commitment of children to this unit must now be changed in light of the *L.L.* and

182. The result of the holdings in *In re L.L.* and *In re Michael E.* can, however, be circumvented if the juvenile court dismisses jurisdiction over the child, and the minor's parent or guardian then "volunteers" the child into the state mental hospital pursuant to § 6000(b) of the Welfare and Institutions Code. See note 163 *supra.*

183. Section 7275 of the Welfare and Institutions Code requires relatives to bear the cost of hospitalization of a family member in a state hospital; however, section 7276 provides that the Director of Health may "reduce, cancel, or remit" the amount to be paid by relatives if they are unable to pay. *Compare* CAL. WELF. & INST'NS CODE § 7275 (West 1972) *with id.* § 7276 (West Supp. 1975).

184. Interview with Robert L. Walker, counsel for L.L. and Michael E., Youth Law Center, in San Francisco, Nov. 14, 1975.

185. *Id.*

186. INSIDE WESTSIDE, NEWSLETTER OF THE WESTSIDE COMMUNITY MENTAL HEALTH CENTER AND COMMUNITY ADVISORY BOARD, Sept.-Oct. 1975, at 7.

187. *Id.*

188. See notes 99-100 & accompanying text *supra.*

Michael E. decisions;[189] a hospital administrator reports that conservatorship proceedings have been completed for some of the patients in the unit, and that all other patients are scheduled for conservatorship hearings.[190]

Recommendations

More innovative programs like Camarillo State Hospital's Five B or San Francisco's ARTS are urgently needed throughout the state.[191] Proper care and treatment of California's mentally ill juvenile court wards cannot, however, be accomplished at the community level without help and guidance from the state.

The state could relieve part of the increased burden on the counties by remitting to the applicable local treasury the state funds which would have been used to treat patients who are rejected by the hospital or who can no longer be treated there. For example, when a state hospital refused to accept a patient because she was "too hard to handle," the state would pay the county the amount the state would have spent had the hospital accepted the patient into one of its treatment programs. Similarly, children who were formerly placed by the juvenile court in state mental hospitals, but who now must be treated at the community level unless a jury determines that they are "gravely disabled" would have their community treatment subsidized by the state. Current estimates are that the cost per patient per day is approximately $75 to $85 at the Children's Unit at Napa State Hospital and $45 to $50 at the Napa Adolescent Unit.[192] If these amounts were remitted to the counties, expanded services at the local level would be possible. This type of solution was recently applied by a Pennsylvania court. In *In re Joyce Z.*,[193] the state institution for the retarded admitted that it could not adequately treat Joyce; the alternative was local treatment at greater

189. See notes 160-85 & accompanying text *supra.*

190. Telephone interview with Dr. I. H. Perkins, Consultant, Office of Program Review, Camarillo State Hospital, Nov. 19, 1975.

191. One observer, with a distinguished career as police officer, probation officer, and mental health care consultant, presently in private practice as a psychiatric social worker in Oakland, stated that the lack of treatment facilities for the dangerous or "acting out" mentally ill juvenile is almost universal. In his experience, such minors are frequently subjected to lengthy stays at juvenile halls, while their probation officers try desperately to find a place that will treat and care for such problem children. Interview with Arthur E. Elliott, Summit Psychiatric Center, in Oakland, Cal., Nov. 18, 1975.

192. Telephone interview with Betty Webster, Coordinator, Community Relations, Children's Center, Napa State Hospital, Nov. 19, 1975. The vast difference in cost between the Children's Unit and the Adolescent Unit at Napa is attributable to the fact that the Children's Unit has a much higher staff-patient ratio than does the Adolescent Unit.

193. See note 149 & accompanying text *supra.*

than usual county expense. The court ordered the state to pay for the community-based treatment, while the county was to provide the cost of casework.[194] Such a revenue sharing plan should, in appropriate cases, be used in California.

Another way in which to provide better treatment services to juvenile court wards would be to coordinate children's programs more efficiently at the local level. One child may, for example, be eligible for child welfare, Medi-Cal, and special education funds. If all social welfare services available to children were coordinated, funds could be pooled, thus insuring maximum effectiveness for each scarce tax dollar.[195] The present situation in many counties, according to one social worker, is that families with troubled children are frequently shunted from agency to agency; one county office may not know enough about other county programs to refer the client to the right source of help.[196] This Kafkaesque situation is economically unsound and serves only to create anger and frustration in families seeking assistance. If parents of mentally ill children were aware of available community services, they might be able to avoid releasing their children to the wardship of the juvenile court. At present, the juvenile court in many counties becomes the last resort for distraught parents who are unable to thread their way through the maze of social service agencies.[197]

Probation departments could utilize existing private facilities to a greater extent than they do currently. One observer feels that the private sector can compete economically with public institutions in this area while offering similar, if not better, care and treatment.[198]

Higher priorities should be given to children's programs at the local level funded under the Short-Doyle Act,[199] which provides for state funding of certain city and county mental health programs. In the past, when scarce resources have been allocated, children's services have often received inadequate funds,[200] in spite of an announced legislative intent to give special consideration to children's programs.[201]

194. *Id.*

195. Interview with Robert L. Walker, Youth Law Center, in San Francisco, Cal., Nov. 14, 1975.

196. Interview with Arthur E. Elliott, Summit Psychiatric Center, in Oakland, Cal., Nov. 18, 1975.

197. *Id.*

198. *Id.* The same solution was proposed by the Bolton report. See, PRELIMINARY REPORT, *supra* note 1, at 170.

199. CAL. WELF. & INST'NS CODE §§ 5600-5767 (West 1972 & Supp. 1975). The state provides 90% of the funds for Short-Doyle programs, while the county contributes 10% of the money. *Id.* § 5705 (West 1972).

200. PRELIMINARY REPORT, *supra* note 1, at 17.

201. CAL. WELF. & INST'NS CODE § 5704.5 (West 1972).

Providing better care and treatment for the menally ill juvenile court ward does not require the costly erection of new buildings. Supervisor Hayes of Los Angeles has suggested that space in existing buildings be converted to treatment centers for "hard to handle" mentally ill juveniles.[202] This practical suggestion could be effected with relative ease and economy. One observer believes that taxpayers and private foundations are willing to pay for "tangibles," such as red brick hospital buildings, but not for "intangibles," such as the services of psychiatrists, nurses, social workers, and other personnel.[203] Since treatment and rehabilitation of mentally ill juveniles cannot be accomplished without adequate staff,[204] this public attitude must be changed.

The alternative to extensive efforts to establish and maintain effective treatment programs for the children whose mental problems are most severe is that these juveniles may be "warehoused" in juvenile halls, receiving no treatment at all. Some of these children, if ignored, might grow out of their behavioral problems through the normal maturation process; others may be so ill that medical science lacks a cure for their disorders. In any event, the state, once it takes custody of such children, has a legal duty to provide "such care and guidance . . . as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the State."[205] Surely the state's best interests are not served by allowing human potential to be wasted and children to suffer merely because adequate treatment facilities are not available for mentally ill juveniles.

Although he was not known for enthusiastic support of public expenditures for social welfare programs, Herbert Hoover was fond of saying that "children are our most valuable natural resource."[206] To realize this ideal, creative steps must be taken to provide the care and treatment to which mentally ill juvenile court wards are constitutionally and statutorily entitled.

*Jane Elizabeth Lovell**

202. *See* Motion of Supervisor James A. Hayes at 2-3, Exhibit A, in Petition for Writ of Mandate, Doe v. Hufford, Civil No. 113831 (L.A. County Super. Ct., filed Jan. 29, 1975).

203. Interview with Arthur E. Elliott, Summit Psychiatric Center, in Oakland, Cal., Nov. 18, 1975.

204. See the court's recommendations concerning the minimum professional staff necessary for adequate treatment in Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974). See note 88 & accompanying text *supra*.

205. CAL. WELF. & INST'NS CODE § 502 (West 1972).

206. N.Y. Times (Obituary), Oct. 21, 1964, at 42, col. 6.

* Member, Second Year Class.